IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 234 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLABEN ROHITBHAI PATEL

Versus

ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR MB GANDHI and MR SUNIL C PATEL for Petitioner

MR AJ DESAI, ld.AGP for respondent no.1

MR JM BAROT for respondent no.2

MR NK MAJMUDAR for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/03/2000

ORAL JUDGEMENT

The petitioner herein claims to be an elected Sarpanch of Hazira Gram Panchayat, Taluka Choryasi, District Surat. She claims to have been elected in 1995.

While she was working as Sarpanch, a show cause notice dated 14th July 1998 was served upon her for her removal under Section 57(1) by the District Development Officer, Surat. A copy of this show cause notice has been placed on record as Annexure.C. The petitioner filed a reply to the said show cause notice vide Annexure.D dated 28th September 1998. The District Development Officer, District Panchayat, Surat, then passed the order dated 2nd November 1998 removing her from the office of the Sarpanch under Section 57(1) of the Gujarat Panchayats Act, 1993, which will be hereinafter referred to as 'the Act'. Against this order dated 2nd November 1998 passed by the District Development Officer, Surat, the petitioner approached the State of Gujarat, in appeal under Section 57(3) of the Act. The State Government by its order dated 4th January 1999 upheld the order passed by the District Development Officer and rejected the petitioner's appeal. Aggrieved from the order dated 2nd November 1998 passed by the District Development Officer, Surat and the order dated 4th January 1999 passed by the State of Gujarat, the present petition was filed by the petitioner before this Court on 12th January 1999. On 13th January 1999, notice returnable on 25th January 1999 was issued. In presence of the Counsel for respondent no.3, on 3rd February 1999, the petition was admitted and the case was directed to be listed for final hearing on 19th February 1999. No reply has been filed by any of the three respondents.

2. The petitioner was sought to be removed for seven allegations. The gist of these seven allegations and the gist of the reply thereto as given by the petitioner in the reply to the show cause notice are as under:

(i) During the year 1996-97, for the purpose of providing the total 1 to 7 drainage lines in the Hazira Gram Panchayat, instead of the mechanical approval has been granted by the Choryasi Taluka Panchayat for the sum of Rs.3,40,025/without making the provision thereof in the budget, an expenses to the tune of Rs.3,42,980/has been incurred from the self funds. Thus, no any sanction has been obtained for the additional expenses to the tune of Rs.2,995/- incurred for the same and that, no any certificates for the completion of such work had been obtained.

Reply:

It is not true that the provision of this

expenses has not been made in the budget, but the Panchayat itself is legally empowered to place its own amended budget and in this regard, the supplementary budget was submitted on 18/3/97, prior to completion of the financial year. The administrative approval for the said work has been obtained on 15/2/97, 12/12/96 and 29/1/97 and thereafter, on 29/7/96, a mechanical approval was received. Thus, the administrative approval has been granted for in all Rs.3,50,000/- and the mechanical approval was also for Rs.3,50,000=00. The Deputy Engineer of the Taluka Panchayat is empowered to sanction Rs.50,000/- and accordingly, Deputy Engineer is also empowered to approve the plan estimate of this work and sanction the same. He has granted the approval. The expenses had also been incurred for cleaning the dirt and earth and the separate vouchers for the payment of daily wages have also been prepared. A request was also made alongwith the necessary vouchers for obtaining the completion report before the competent authority, but when the completion certificate has not been issued by the Deputy Engineer, then in that case, there is no any breach on our part in performing the duties.

(ii) During the year 1997-98, for the purpose of providing the total 1 to 34 drinking water pipe lines in the Hazira Gram Panchayat, instead of the mechanical approval has been granted by the Choryasi Taluka Panchayat for the sum of Rs.15,66,146/- without making the provision thereof in the budget, an expenses to the tune of Rs.23,00,000/has been incurred from the self funds and that, no any certificate for the completion of such work had been obtained.

Reply:

The administrative approval from the Taluka Panchayat for the work of Rs.15,66,146/- has been received. For doing any such construction work, the Gram Panchayat has to make the provision thereof in its budget and then, ask for the administrative approval from the Taluka Panchayat. Thereafter, the overseer of that Taluka Panchayat has to prepare its plan and estimate of the expenses and the Deputy Engineer has to forward the same to the Taluka Panchayat Officer. The Deputy Engineer has to grant its

mechanical approval and the supervision of that work is to be done by the Overseer of the concerned Taluka Panchayat and the Gram Panchayat has to merely issue the completion certificate and in the circumstances, it is absolutely illegal that you have held the Sarpanch of the village responsible for the same.

(iii) During the year 1996-97, for the purpose of constructing the Nalia for disposal of rainy water, instead of the mechanical approval has been granted by the Choryasi Taluka Panchayat for the sum of Rs.26,750/-, an expenses to the tune of Rs.29,500/- has been incurred from the self funds. Thus, the additional expenses of Rs.2,750/- has been incurred and that, no any certificates for the completion of such work had been obtained.

Reply:

The Gram Panchayat has incurred the expenses of Rs.26,000/- as has been sanctioned by the Taluka Panchayat and the additional amount of Rs.3,000/has been spent for providing small small pipes and the vouchers thereof has also been prepared which were approved by the Gram Panchayat. Thus, the expenses has been incurred only for the amount sanctioned by the authority. For obtaining the completion certificate, letter dated 29/3/97 has been sent to the Deputy Engineer, Taluka Panchayat, but the same has not been responded by him.

(iv) During the year 1997-98, for the purpose of constructing the Chotara in the Hazira Gram Panchayat, without making the provision thereof in the budget, an expenses to the tune of Rs.49,000/- has been incurred from the self funds and that, no any certificates for the completion of such work had been obtained.

Reply:

The allegation is false. The provision of the supplementary budget has been made in the General Meeting held on 18/3/97. The administrative and mechanical approval thereof have been obtained. The work is being done through contractors after inviting the tenders and for the purpose of obtaining the completion certificate, the

contractors had filled up the forms and forwarded to the President, on which I put my signature in the capacity of Sarpanch.

(v) During the year 1996-97 and 1997-98, for the purpose of providing the total 1 to 13 roads in the Hazira Gram Panchayat area, instead of the mechanical approval has been granted by the Choryasi Taluka Panchayat for the sum of Rs.6,14,000/-, without making the provision thereof in the budget, an expenses to the tune of Rs.2,88,840/- has been incurred from the self funds and that, no any certificates for the completion of such work had been obtained.

Reply:

Prior to the year 1996-97, the provision of Rs.30,000/- was made in the budget. But thereafter, as per the necessity of preparing the new roads, the same came to be amended by way of resolution No.5(15) passed in the General Meeting held on 18/3/97 and increased to Rs.3,00,000/and thus, the amount of Rs.3,00,000/- was allocated for the year 1996-97 and the mechanical approval for the same has been received on 16/10/96 and accordingly, the administrative approval and mechanical approval were also obtained, wherein the total expenses of Rs.1,48,000/- was incurred and the other expenses of Rs.45,000/- was incurred from from the grant received from the MLA. For this, the Taluka Panchayat is solely responsible and the Gram Panchayat has to merely keep its watch over the work.

For the year 1997-98, the provision of Rs.2,00,000/- was made in the budget, as against which, expenses of Rs.90,825/were incurred and other miscellaneous expenses of Rs.490/- were incurred, for which the approval was obtained.

(vi) During the year 1996-97, under the Javahar Rojgar Yojna in the Hazira Gram Panchayat, instead of the mechanical approval has been granted by the Chotyasi Taluka Panchayat for the sum of Rs.1,30,910/-, without making the provision thereof in the budget, an expenses to the tune of Rs.1,30,910/- has been incurred from the self funds. Thus, no any sanction has been obtained for the additional expenses to the tune of Rs.1,45,464/- incurred for the same; meaning

thereby, an amount of Rs.14,554/has been paid excess, and that, no any certificates for the completion of such work had been obtained.

Reply:

This is purely a misunderstanding. In the year 1994-95, with respect to the Javahar Rojgar Yojna, the plan estimate and estimate to the tune of Rs.66,535/had been prepared and forwarded by the Taluka Panchayat (IRD), as against which an expenses of Rs.43,738/- was incurred. In the year 1995-96, the plan estimate and estimate to the tune of Rs.82,125/had been prepared and forwarded by the Taluka Panchayat (IRD), as against which n expenses of Rs.50,279/- was incurred. In the year 1996-97, the plan estimate and estimate to the tune of Rs.47,885/had been prepared and forwarded by the Taluka Panchayat (IRD), as against which an expenses of Rs.51,446/- was incurred. Therefore, the mention about Rs.1,30,910/- for the year by you, is illegal and at that relevant time, making the total of three years' grant, it comes to Rs.1,47,812/- with interest. As against this, the expenses of Rs.1,45,465.24 ps. has been incurred and thus, there is no any excess amount.

It was the responsibility of the Taluka Panchayat (IRD) for awarding approval and issuing certificate, since the scheme was of Javahar Rojgar Yojna.

(vii) During the year 1996-97, under the Gokul Gam Scheme in the Hazira Gram Panchayat, instead of the mechanical approval has been granted by the Choryasi Taluka Panchayat for the sum of Rs.1,32,790/-, without making the provision thereof in the budget, an expenses to the tune of Rs.2,00,100/- has been incurred from the self funds. Thus, no any sanction has been obtained for the additional expenses to the tune of Rs.67,310/incurred for the same; and that, no any certificates for the completion of such work had been obtained.

Reply:

The Gokul Gam Scheme is approved by the Government and as per this scheme, the Taluka Panchayat (IRD) has to prepare the estimate and

the Gram Panchayat has to work as per the direction/orders of the Taluka Panchayat. This work is not required to be done from the self-earned funds. This work was to be done from the grant given by the Government and its plan estimates had been prepared by the Taluka Panchayat (IRD). This grant was of Rs.2,00,000/and the expenses incurred were also to the tune of Rs.2,00,000/-, wherein the interest on this grant was Rs.2,851/-. Meaning thereby, this expenses had been incurred out of this grant and its interest only. Therefore, the additional expenses as stated by you to the tune of Rs.67,310/- is absolutely contrary to the evidence on record."

3. Learned Counsel for the petitioner has assailed the impugned orders passed by the District Development Officer and the State Government on the following grounds:

(a) That the copy of the Taluka Development Officer's report/opinion which has been relied upon throughout in the body of the impugned orders, had not been supplied to the petitioner.

(b) That no inquiry as contemplated under Section 57(1) of the Act was held.

(c) That the allegations as have been levelled against the petitioner do not constitute any misconduct or any other ground as contemplated under Section 57(1) of the Act for the purpose of removal of the petitioner as Sarpanch.

(d) That the documents which have been filed by the petitioner along with the reply to the show cause notice have not been considered by the authors of the impugned orders and the orders have been passed without application of mind and without considering the available material on record.

(e) That the orders have been passed on extraneous reasons and for reasons which cannot be said to be germane for the purpose of removal of a Sarpanch under Section 57(1) of the Act.

4. On behalf of the respondents, it has been contended that there was no preliminary inquiry and as such, there was no question of giving the copy of the preliminary inquiry report. That in the reply to the

show cause notice, the petitioner did not demand the copy of the Taluka Development Officer's report/opinion; that along with the show cause notice, certain documents had been made available to the petitioner; that the petitioner had failed to substantiate her replies to the allegations by filing any documentary evidence and the allegations do constitute a case of misconduct against her for which the removal was warranted and the impugned orders do not suffer from any infirmity.

5. I have considered the submissions as have been made on behalf of both the sides. Before I take up as to whether the allegations as have been levelled against the petitioner constitute a case of misconduct against her or not, it may be pointed out that the executive functions which are required to be discharged by the Sarpanch are enumerated in Section 55 of the Act and the same are as under:

"55. Executive functions of Sarpanch, or Upa-Sarpanch:- (1) Save as otherwise expressly provided by or under this Act, the executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a village panchayat shall vest in the Sarpanch thereof who shall be directly responsible for the due fulfilment of the duties imposed upon the panchayat by or under this Act. In his absence of the Sarpanch his powers and duties shall save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch.

(2) Without prejudice to the generality of the foregoing provision:-

(a) the Sarpanch shall--

(i) preside over and regulate the meetings of the panchayat;

(ii) exercise supervision and control over the acts done and actions taken by all officers and servants of the panchayat;

(iii) incur contingent expenditure upon fifty rupees at any one occasion;

(iv) operate on the fund of the panchayat including authorisation

of payment, issue of cheques and refunds;

(v) be responsible for the safe custody of the fund of the panchayat;

(vi) cause to be prepared all statements and reports required by or under this Act;

(vii) exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder.

(b) ....."

If we examine the allegations as have been levelled against the petitioner in juxtaposition with the enumerated functions of Sarpancyh, we find that the petitioner has only acted in pursuance of the resolutions as had been paspsed by the Panchayat and to each of the allegations she has filed an elaborate reply explaining that the works had been carried out as per the resolutions which had been passed by the Panchayat and the grounds as are mentioned in Section 57(1) for the purpose of removal are guilty of misconduct in discharge of duties or of any disgraceful conduct or abuse of powers or making persistent default in the performance of duties and functions under the Act or becoming incapable of performing duties and functions under the Act. If we sift the allegations as levelled against the petitioner against these grounds, we find that the ingredients to constitute any of the grounds for misconduct in discharge of the duties or default in performing the duties and functions under the Act etc. are totally wanting in the facts of the present case, rather such ingredients cannot be even conceived of.

6. The nature of the allegations read with the replies as have been narrated hereinabove would show that all these allegations are in the nature of some financial irregularities and the same appear to have been explained by the petitioner. More so, there is no allegation whatsoever against the petitioner in person. There is no allegation against the petitioner that she had pocketed any money to her own advantage or that any loss was caused to the Panchayat or that the public interest has been made to suffer. The allegations show that the objection is that procedure has not been followed while

executing the development projects and for that purpose in the opinion of this Court the petitioner cannot be held to be responsible for accounting procedure and the same stand fully explained by the replies as have been given. The guilt or misconduct of the Sarpanch in discharge of duties or any disgraceful conduct or abuse of power or making persistent default in performance of duties and functions under the Act etc. has to do with a related blemish on the part of the person concerned and not in the matter of the accounting procedure with regard to the budgets etc. in different development projects undertaken by the Panchayat for the welfare. It is not as if this Court is considering as to whether the allegations are proved or not, but this Court is concerned only with the question as to what is the nature of the allegation which can be said to be relevant for the purpose of removal of an elected Sarpanch on the grounds set out in Section 57(1) of the Act. If the allegations as set out against the petitioner in the instant case are taken to be the allegations relevant to the grounds of misconduct etc. as set out in Section 57(1), I think no elected office bearer or any functionary will be free from such objections of no consequence against the person concerned. It has to do with the discharge of the functions by the Panchayat, i.e. body as a whole on the basis of the resolutions passed by the Panchayat and no single individual can be held to be liable for such allegations so as to make him or her to suffer removal from an elected office. Unless and until there is something personal against the elected office bearer sought to be removed, Section 57(1) of the Act cannot be invoked. On the basis of the accounting procedure or irregularities therein, if any, no single elected office bearer of the Panchayat can be held to be liable so as to carve out a case of misconduct. If such allegations are taken to be the allegations for the purpose of Section 57(1) of the Act, then no elected member of the Panchayat who has participated in such meetings, shall escape the consequences as have been made to be suffered by the petitioner. In the opinion of this Court, for the purpose of removing an elected office bearer, there has to be concrete and credible material against him in person which must be germane to the grounds of misconduct etc. as mentioned in Section 57(1) of the Act and therefore, I find that in the instant case, first of all, the show cause notice itself was wholly misconceived. The author of the show cause notice failed to appreciate the real orientation of Section 57(1) of the Act and the show cause notice itself was wholly disoriented.

7. In the facts of the present case even if all the allegations are taken to be true on their face value, they at the most would suggest a case of supervisory negligence. In the opinion of this Court, it can't be put at par with misconduct or a disgraceful conduct or an abuse of power or a default in performance as envisaged by Sec.57(1) of the Act. Sec.57(1) is reproduced as under:--

"57(1). Removal from office.-- (1) The competent authority may remove from office any member of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat."

Learned Counsel for the petitioner has cited the case of Prabhodrai Dhirajram Nayak v. The District Panchayat, Surat and ors., reported in AIR 1983 Guj. p.229. In this case, the Court considered the provisions of Sec.49 in a case of removal of the Chairman of a Nagar Panchayat. Para 8 of this judgment shows that grounds mentioned in Sec.49 were exactly the same, i.e. (1) A person guilty of misconduct in the discharge of his duties; or (2) a person who has a disgraceful conduct; or (3) who abuses his powers; or (4) makes persistent default in the performance of his duties and functions under the Act; or (5) becomes incapable of performing his duties under the Act, as are prescribed under Sec.57(1) under consideration in the present case. In this case of Prabhodrai Dhirajram Nayak (supra), the Court has taken the view that lack of supervision could never be equated with abuse of powers.

In Udaysinh Shankarsinh Zala v. S.D. Vadara and ors., reported in 1995 (2) Gujarat Current Decisions, p.386, this Court had taken the view that removal of Sarpanch for alleged illegal levy of toll was erroneous in as much as levy of toll was authorised by Panchayat

and such levy of toll was made by a collective decision of Panchayat and not by Sarpanch alone and removal of Sarpanch was accordingly held to be illegal.

The case of Laladhar Pragji and ors. v. State of Gujarat and ors., reported in 1995 (2) Gujarat Current Decisions, p.686 was not a case of removal but a case of recovery of loss allegedly caused due to failure on the part of former Sarpanch and Upa-Sarpanch to impose house tax. The Court held that inaction or failure was of the Panchayat as a whole and not of any individual member.

8. A controversy has been raised by the petitioner with regard to non-supply of the Taluka Development Officer's report/opinion. Although no reply has been filed, I find from the contents of the impugned order that the reference to the Taluka Development Officer's report/opinion was made for the first time in the impugned order. The Taluka Development Officer's opinion has weighed with the author of the impugned order throughout the body of the impugned order and therefore the same should have been supplied to the petitioner before taking the same into consideration. This material has been taken into consideration by the District Development Officer and the same has been accepted as it is by the Addl. Development Commissioner while passing the final impugned order dated 4th January 1999. It is of course true that in the end of the show cause notice it is mentioned that certain papers from page 61 to 489 are enclosed with the show cause notice and as has been pointed out by the learned Counsel for the respondent no.2, the petitioner has also acknowledged the receipt of such papers as is sought to be inferred by the learned Counsel for the respondent no.2 with reference to internal page 3 of the impugned order passed by the District Development Officer wherein it has been stated that the petitioner in her letter dated 21.8.1998 had mentioned that she had received the papers along with the notice. It implies that certain papers were sent along with the show cause notice, but it is not known as to whether these papers included the copy of the report/opinion of the Taluka Development Officer or not. Moreover, it was pointed out by the learned Counsel for the petitioner with reference to the body of the impugned order itself, internal pages 10 and 11 wherein the say of the petitioner's advocate has been recorded that the advocate while filing the Vakalatnama on page 1067 of the record had made written submissions stating therein that a reply to the show cause notice had been filed by the petitioner, and whereas the copy of the preliminary inquiry report had not been made available, the detailed

reply could not be filed. It was clarified by the learned Counsel for the petitioner that the reference to preliminary inquiry report means the report/opinion of the Taluka Dev. Officer and therefore the say of the respondents that no preliminary inquiry was held is no answer to the non-supply of Taluka Dev.Officer's report/opinion which did exist and has been relied upon. In fact, the Taluka Dev. Officer's report is no report based on any inquiry, it is only his opinion and is no report in the strict sense of the term, when the respondents themselves say that no preliminary inquiry was held. Thus, on the basis of the endorsement below the show cause notice, it cannot be said that the documents enclosed with the show cause did contain the copy of such report and as against it, there is a positive grievance made on behalf of the petitioner on record that such copy had not been made available to her. In such a fact-situation, it appears that the copy of the preliminary inquiry report, i.e. Taluka Development Officer's report/opinion may not have been supplied to the petitioner, and the order has been passed on an undisclosed material which has been heavily relied upon against her.

9. About the grievance of the petitioner that the documents which are mentioned in the end of the reply to the show cause notice i.e. pages 1 to 264 have not been considered, what I find from the reading of the two impugned orders is that the authors of the impugned orders have simply narrated the allegations and the replies thereto and without holding any further inquiry, have read the allegations themselves as the proof of the allegations and have taken all these allegations to be proved. The mere reference to the replies does not mean the real consideration of the replies to the allegations. Section 57(1) of the Act does contemplate the notice, the opportunity and 'such inquiry as it deems necessary'. 'Such inquiry as it deems necessary' would mean as short and summary an inquiry as is considered necessary by the competent authority for the purpose of passing such order. Therefore, some sort of inquiry must be certainly there and must precede the passing of the order. The 'inquiry as it deems necessary' cannot mean a zero inquiry. He may follow the shortest possible procedure as he deems fit for the purpose of such an inquiry but the inquiry as a whole and as such, cannot be dispensed with altogether, otherwise it would simply mean the expression of the opinion of the competent authority with reference to the language of the allegations merely by looking into the reply and it may be a case of formation of wrong opinion without any material to form such an

opinion. The scope of the word 'inquiry' as occurring in Sec.57(1) of the Act was considered in the case of M.R. Shah v. Addl. Dev. Commissioner reported in 1999 (3) G.L.R. p. 2554 at p.2564 as under:

> "....The dictionary meaning of the words "to inquire" is to "to exert oneself to discover something". "Inquiry is a road to truth" said Gladstone and therefore the meaning of the term "inquiry" is to ask, or to seek and search for knowledge, investigation of a question. In the case of Jamunabai Motilal v. State of Maharashtra & Anr., AIR 1978 Bom.200, the meaning of the word "inquiry" is made clear of course keeping in mind the provisions of Maharashtra Agricultural Lands (Ceiling of Holdings) Act, but it is a good guide for interpreting the words "inquiry" appearing in Sec.57 of the Act. It is made clear in the decision that the word "inquiry" has a specific meaning and it is a process by which information is collected so as to determine the eventual entitlement of the person in the matters of his holding land. That process has distinctively the initiation by a notice followed by requisite hearing and the conclusion which will take the shape either of a decision or an order. Added to this are the provisions providing for appeal against the orders that conclude the inquiry. Hence, "inquiry", in short, carries the meaning a process or a path to discover the truth which contemplates different stages right from initiation of the proceedings viz. filing of a petition, and/or issuance of the notice, filing written statement, hearing for collection of the evidence if at all necessary followed by hearing the arguments and lastly the conclusion which will take a shape of a decision or an order. When accordingly, the meaning of the word "inquiry" can be spelt out, the act of giving the notice and granting the opportunity of being heard are not as submitted the stages foreign to the stages of the inquiry, but are the stages intrinsic or components of the inquiry".
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> .....
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> "In the said Sec.57 of the Act, the word "inquiry" does not precede the words "notice" and "opportunity of being heard, but follows those words. It may be stated that the provision has to be construed reading the same as a whole and the construction must be logical and meaningful

and not absurd, indiscriminate, or eerie. One should not be swayed away with Legislature's permutation. The inquiry, therefore, cannot be described to be the process having the stages other than the essential inherent stages of service of notice and hearing and the like. Hence requirements of issuance of notice and opportunity of being heard cannot in isolation be construed or assumed to be the pre-requisite formalities before the inquiry is held."

However, the Court has then noticed that a notice to show cause was given, thereafter opportunity to file the written statement was also given and thereafter eight times the opportunities to submit were also given during the course of hearing but grant of such opportunities was not at all availed of, with the result the Distt. Dev. Officer was constrained to proceed further in accordance with law and pass the order and about these facts there was no controversy before the Court. In view of such a fact-situation, the Court found that every formality had been undergone and it could not be said that inquiry in accordance with law had not been held. The ratio of this decision also supports the view that the requirement of the inquiry can't be dispensed with. Besides this in the case of Prabhodrai Dhirajram Nayak, AIR 1983 Guj.229 (supra), in para 10, it has observed as under:

"10. It could be that, if an enquiry was properly held it could have been shown that either the petitioner misused his powers or the Secretary misused his powers. But, for that purpose, a proper enquiry was required to be made. Preliminary enquiry was made and the papers were not made available to the petitioner. Apart from the preliminary inquiry, Sec.49 contemplates that the Chairman may be removed from office after giving him an opportunity of being heard and giving due notice to him in this behalf to the Panchayat and after such inquiry as it is deemed necessary. Now, therefore, not only a notice, not only an opportunity of being heard, but "inquiry" is contemplated."

Thus I find ample authority in support of the aforesaid view I have taken on the question of inquiry as contemplated under Sec.57(1) of the Act.

10. Even if it is taken that the allegations as were levelled had been framed on the basis of the report given by the Taluka Development Officer, such allegations were

certainly required to be proved by way of evidence so as to show that it was the petitioner who was responsible for these allegations. It was to be seen as to what was the actual role of the petitioner so as to constitute a case of real misconduct against her. It is admitted that no inquiry whatsoever was held and thus the concept of 'some inquiry' as envisaged by Section 57 i.e. 'after inquiry as it deems necessary' has been violated and this requirement of statute has been given a go bye, more particularly when it is the case of the respondents themselves that no preliminary inquiry was held.

The opportunity would mean a real and effective opportunity. The real and effective opportunity would not simply mean taking a reply and pass the order taking the allegations as proof of the allegations. The effective opportunity would mean a real application of mind to the allegations, replies and the material placed in support of the allegations based on evidence, documentary or otherwise. While it is the grievance of the petitioner that large number of documents running into 1 to 264 which were filed along with the reply have not been considered, the authors of the impugned orders at places more than one have mentioned that the petitioner failed to substantiate her replies by documents. It therefore appears to be a case of no real and effective consideration of documents before recording that the petitioner failed to substantiate her replies by documents.

11. For the purpose of removing a Sarpanch from holding the elective office, the officers who are charged with the statutory duties under the Act cannot act in such a cursory manner with casual approach so as to curtail or truncate the tenure of the holder of an elective office. The elected representatives for the purpose of removal can't be treated like Govt. servants whose services are controlled at the pleasure of the President or Governor under Art.310 of the Constitution. The officer charged with the power for removal under Sec.57 does not enjoy any such pleasure. The pleasure doctrine is alien in case of elected representatives. If the elected persons are allowed to be removed on such jejune grounds, it would simply mean throttling down the principles of democracy in the local self-bodies and the elected representatives of the people like the petitioner would be made to lose their tenure at the altar of the arbitrary exercise of powers by the officers who have been charged with the duty under the Act to at least address themselves to the real object behind such provision besides the grounds and procedure. While such

powers are given to the functionaries of the State under the statute, the officers are charged with a very important duty of determining the rights of the elected persons and such rights cannot be lightly interfered with merely on the basis of the procedural errors in carrying out the development projects for which no single individual like the petitioner could be held responsible simply because she held the office of Sarpanch. For executing the policy decisions taken by the Panchayat, there are employees such as Engineers, Accountants, Talaties etc. who have to take care of these procedures. After all, the persons working as Sarpanchs are not supposed to be the experts with regard to the knowledge of the procedure. They are primarily concerned with the policies for the development of the local self-bodies and they can manifest their duties and functions through resolutions and to see that such decisions are acted upon and given effect to. Such policy decisions are carried out only through the concerned officers and the elected persons cannot be held liable if the officers faulter in following the procedure. The elected office bearers at Panchayat level are not supposed to be substantially trained or acquainted with such procedures. I find that in the instant case, the reasons which have been given and the allegations on the basis of which the petitioner has been removed from the office of Sarpanch cannot be said to be the reasons which are germane to the grounds mentioned in Section 57(1) of the Act. The allegations have no nexus with the real considerations which must weigh in such cases and therefore it is found that the orders have been passed for the purposes and reasons which can neither be said to be authorised nor permissible under law. The impugned orders are the result of a misconceived and disoriented approach so much so that the show cause notice dated 14th August 1998 itself was misconceived.

12. The impugned order dated 2nd November 1998 passed by the District Development Officer, District Panchayat, Surat and the order dated 4th January 1999 as has been passed by the Addl. Development Commissioner cannot be sustained in the eye of law. Both these impugned orders are hereby quashed and set aside and it is directed that the petitioner stands relegated to the office of the Sarpanch as she was holding prior to the passing of the impugned orders. This Special Civil Application is accordingly allowed. The Rule is made absolute. No order as to costs. Direct service is permitted.

(M.R. Calla, J.)

Sreeram.